(E) Developing (and periodically updating) a list of items of durable medical equipment which are subject to prior authorization.

(3) Employees of a contractor, subcontractor, or state agency performing survey, certification, or enforcement functions under title XVIII of the Social Security Act or Section 353 of the Public Health Service Act but only to the extent the requested information was acquired in the course of performing those functions and regardless of whether documents are also relevant to the state's activities.

(4) Employees and qualified contractors of an entity covered under the Federally Supported Health Centers Assistance Act of 1992, as amended, 42 U.S.C. 233(g)–(n), (FSHCAA), provided that the testimony is requested in medical malpractice tort litigation and relates to the performance of medical, surgical, dental or related functions which were performed by the entity, its employees and qualified contractors at a time when the DHHS deemed the entity and its employees and qualified contractors to be covered by the FSHCAA.

* * * * *

Dated: August 28, 2008.

Michael O. Leavitt,

Secretary.

[FR Doc. E8–21113 Filed 9–12–08; 8:45 am]

BILLING CODE 4150–26–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202 and 252

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to update the list of DoD contracting activities and to correct a reference in a contract clause.

DATES: *Effective Date:* September 15, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0311; facsimile 703–602–7887.

SUPPLEMENTARY INFORMATION: This final rule amends DFARS text as follows:

- *202.101*. Adds the U.S. Transportation Command to the list of DoD contracting activities.
- *252.212–7001*. Amends the reference to the clause at 252.219–7004 in paragraph (b)(3) to reflect the current clause date.

List of Subjects in 48 CFR Parts 202 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 202 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 202 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

■ 2. Section 202.101 is amended in the definition of ''Contracting activity'' by adding at the end ''United States Transportation Command, Directorate of Acquisition''.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

■ 3. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read ''(SEP 2008)''; and

■ b. In paragraph (b)(3) by removing ''(APR 2007)'' and adding in its place ''(AUG 2008)''.

[FR Doc. E8–21375 Filed 9–12–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 206, 225, and 252

RIN 0750–AG02

Defense Federal Acquisition Regulation Supplement; Acquisitions in Support of Operations in Iraq or Afghanistan (DFARS Case 2008–D002)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Sections 886 and 892 of the National Defense Authorization Act for Fiscal Year 2008. Section 886 provides authority for DoD to limit competition when acquiring products or services in support of operations in Iraq or Afghanistan. Section 892 addresses competition requirements for the procurement of small arms for assistance to Iraq or Afghanistan.

DATES: *Effective date:* September 15, 2008.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before November 14, 2008, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2008–D002, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2008–D002 in the subject line of the message.

○ *Fax:* 703–602–7887.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

○ *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703–602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

Section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181) provides authority for DoD to limit competition when acquiring products or services in support of military operations or stability operations in Iraq or Afghanistan (including security, transition, reconstruction, and humanitarian relief activities) under certain circumstances. In those circumstances, and when the required determination is made, Section 886 authorizes DoD to—

○ Limit competition to products or services from Iraq or Afghanistan;

○ Restrict an acquisition to a particular source or sources from Iraq or Afghanistan; or

○ Provide a preference for products or services from Iraq or Afghanistan.

House Conference Report 110–477 requires DoD to submit a semi-annual report to the congressional defense committees addressing the use of the authority provided in Section 886 through the end of fiscal year 2009.

Section 892 of Public Law 110–181 applies to acquisitions of small arms for assistance to the Army of Iraq or Afghanistan, the Police Forces of Iraq or Afghanistan, and other security organizations of Iraq or Afghanistan. For such acquisitions, Section 892 contains requirements for DoD to ensure, consistent with 10 U.S.C. 2304, that—

○ Full and open competition is obtained to the maximum extent practicable;

○ No responsible U.S. manufacturer is excluded from competing for such acquisitions; and

○ Products manufactured in the United States are not excluded from the competition.

This interim rule includes—

○ A new Subpart 225.77 to implement the new statutory provisions.

○ A new Trade Agreements provision, and alternate paragraphs for use with the existing Trade Agreements clause, to remove the prohibition against acceptance of Iraqi end products that would otherwise apply to acquisitions subject to the Trade Agreements Act.

○ A new solicitation provision and contract clause to implement the preference for Iraqi and Afghani products authorized by Section 886. The rule permits tailoring of the provision and clause to provide a preference for products of only Iraq or only Afghanistan as appropriate.

○ A new contract clause for use in acquisitions conducted using the authority of Section 886 to restrict an acquisition to Iraqi or Afghani items or sources.

○ Direction that contracting officers should not use Buy American Act/Balance of Payments Program/Trade Agreements provisions or clauses that might otherwise apply if the acquisition were not conducted using the authority of Section 886.

○ Direction that, for acquisitions conducted using the authority of Section 886, the justification and approval addressed in FAR Subpart 6.3 is not required; DoD considers the authority of Section 886 to operate independently of the competition requirements of 10 U.S.C. 2304. However, the rule contains requirements for a written determination to document the rationale for the selected acquisition procedure, in accordance with Section 886.

○ Clarification that construction contracts are included within the scope of acquisitions that may be conducted using the authority of Section 886, consistent with the statutory intent of providing a stable source of jobs and employment in Iraq and Afghanistan.

○ Exclusion of small arms from the items that may be acquired using the authority of Section 886, in view of the specific requirement for competition in the acquisition of small arms addressed in Section 892 of Public Law 110–181.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because application of the rule is limited to acquisitions in support of operations in Iraq or Afghanistan. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2008–D002.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Sections 886 and 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Section 886 provides special authority for use in the acquisition of products or services in support of operations in Iraq or Afghanistan. Section 892 requires DoD to ensure that competition is obtained to the maximum extent practicable when acquiring small arms for assistance to Iraq or Afghanistan. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 206, 225, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 206, 225, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 206, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 206—COMPETITION REQUIREMENTS

■ 2. Sections 206.303 and 206.303–70 are added to read as follows:

206.303 Justifications.

206.303–70 Acquisitions in support of operations in Iraq or Afghanistan.

The justification and approval addressed in FAR 6.303 is not required for acquisitions conducted using a procedure specified in 225.7703–1(a).

PART 225—FOREIGN ACQUISITION

■ 3. Section 225.401–71 is added to read as follows:

225.401–71 Products or services in support of operations in Iraq or Afghanistan.

When acquiring products or services, other than small arms, in support of operations in Iraq or Afghanistan using a procedure specified in 225.7703–1(a), the purchase restriction at FAR 25.403(c) does not apply with regard to products or services from Iraq.

■ 4. Section 225.502 is amended by revising paragraph (b)(i) and adding paragraph (c)(iv) to read as follows:

225.502 Application.

(b) * * *

(i) Consider only offers of U.S.-made, qualifying country, or designated country end products, except as permitted by 225.403 or 225.7703–1.

* * * * *

(c) * * *

(iv) If the solicitation includes the provision at 252.225–7023, Preference for Products or Services from Iraq or Afghanistan, use the evaluation procedures at 225.7703–3.

■ 5. Section 225.1101 is amended as follows:

■ a. In paragraph (2)(iii), by removing ''or'';

■ b. In paragraph (2)(iv)(B), by removing the period and adding in its place ''; or'';
■ c. By adding paragraph (2)(v);
■ d. By revising paragraphs (5) and (6);
■ e. By redesignating paragraphs (7) through (10) as paragraphs (8) through (11) respectively;
■ f. By adding a new paragraph (7);
■ g. In newly designated paragraph (11)(ii)(A), by removing ''or'';
■ h. In newly designated paragraph (11)(ii)(B), by removing the period at the end and adding in its place ''; or''; and
■ i. By adding paragraph (11)(ii)(C) to read as follows:

225.1101 Acquisition of supplies.

* * * * *

(2) * * *

(v) All line items will be acquired using a procedure specified in 225.7703–1(a).

* * * * *

(5) Except as provided in paragraph (7) of this section, use the provision at 252.225–7020, Trade Agreements Certificate, instead of the provision at FAR 52.225–6, Trade Agreements Certificate, in solicitations that include the clause at 252.225–7021, Trade Agreements.

(6)(i) Use the clause at 252.225–7021, Trade Agreements, instead of the clause at FAR 52.225–5, Trade Agreements, if the Trade Agreements Act applies.

(ii) Use the clause with its Alternate I in solicitations and contracts that include the clause at 252.225–7024, Requirement for Products or Services from Iraq or Afghanistan, unless the clause at 252.225–7024 has been modified to provide a preference only for the products of Afghanistan.

(iii) Do not use the clause if—

(A) Purchase from foreign sources is restricted, unless the contracting officer anticipates a waiver of the restriction; or

(B) The clause at 252.225–7026, Acquisition Restricted to Products or Services from Iraq or Afghanistan, is included in the solicitation and contract.

(iv) The acquisition of eligible and noneligible products under the same contract may result in the application of trade agreements to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Trade Agreements clause.

(7) Use the provision at 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products, instead of the provision at FAR 52.225–6, Trade Agreements Certificate, in solicitations that include the clause at 252.225–7021, Trade Agreements, with its Alternate I.

* * * * *

(11) * * *

(ii) * * *

(C) Using a procedure specified in 225.7703–1(a).

* * * * *

■ 6. Section 225.7501 is amended as follows:
■ a. By redesignating paragraphs (a)(5) and (6) as paragraphs (a)(6) and (7) respectively; and
■ b. By adding a new paragraph (a)(5) to read as follows:

225.7501 Policy.

* * * * *

(a) * * *

(5) Use of a procedure specified in 225.7703–1(a) is authorized for an acquisition in support of operations in Iraq or Afghanistan;

* * * * *

■ 7. Subpart 225.77 is added to read as follows:

Subpart 225.77—Acquisitions in Support of Operations in Iraq or Afghanistan

Sec.
225.7700 Scope.
225.7701 Definitions.
225.7702 Acquisition of small arms.
225.7703 Acquisition of products or services other than small arms.
225.7703–1 Acquisition procedures.
225.7703–2 Determination requirements.
225.7703–3 Evaluating offers.
225.7703–4 Reporting requirement.
225.7703–5 Solicitation provisions and contract clauses.

Subpart 225.77—Acquisitions in Support of Operations in Iraq or Afghanistan

225.7700 Scope.

This subpart implements Section 886 and Section 892 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181).

225.7701 Definitions.

As used in this subpart—

Product from Iraq or Afghanistan means a product that is mined, produced, or manufactured in Iraq or Afghanistan.

Service from Iraq or Afghanistan means a service that is performed in Iraq or Afghanistan predominantly by citizens or permanent resident aliens of Iraq or Afghanistan.

Small arms means pistols and other weapons less than 0.50 caliber.

Source from Iraq or Afghanistan means a source that—

(1) Is located in Iraq or Afghanistan; and

(2) Offers products or services from Iraq or Afghanistan.

225.7702 Acquisition of small arms.

(a) Except as provided in paragraph (b) of this section, when acquiring small arms for assistance to the Army of Iraq, the Army of Afghanistan, the Iraqi Police Forces, the Afghani Police Forces, or other Iraqi or Afghani security organizations—

(1) Use full and open competition to the maximum extent practicable, consistent with the provisions of 10 U.S.C. 2304;

(2) If use of other than full and open competition is justified in accordance with FAR Subpart 6.3, ensure that—

(i) No responsible U.S. manufacturer is excluded from competing for the acquisition; and

(ii) Products manufactured in the United States are not excluded from the competition; and

(3) If the exception at FAR 6.302–2 (unusual and compelling urgency) applies, do not exclude responsible U.S. manufacturers or products manufactured in the United States from the competition for the purpose of administrative expediency. However, such an offer may be rejected if it does not meet delivery schedule requirements.

(b) Paragraph (a)(2) of this section does not apply when—

(1) The exception at FAR 6.302–1 (only one or a limited number of responsible sources) applies, and the only responsible source or sources are not U.S. manufacturers or are not offering products manufactured in the United States; or

(2) The exception at FAR 6.302–4 (international agreement) applies, and United States manufacturers or products manufactured in the United States are not the source(s) specified in the written directions of the foreign government reimbursing the agency for the cost of the acquisition of the property or services for such government.

225.7703 Acquisition of products or services other than small arms.

225.7703–1 Acquisition procedures.

(a) Subject to the requirements of 225.7703–2, a product or service (including construction), other than small arms, in support of operations in Iraq or Afghanistan, may be acquired by—

(1) Providing a preference for products or services from Iraq or Afghanistan in accordance with the evaluation procedures at 225.7703–3;

(2) Limiting competition to products or services from Iraq or Afghanistan; or

(3) Using procedures other than competitive procedures to award a contract to a particular source or sources from Iraq or Afghanistan. When other than competitive procedures are used, the contracting officer shall document

the contract file with the rationale for selecting the particular source(s).

(b) For acquisitions conducted using a procedure specified in paragraph (a) of this subsection, the justification and approval addressed in FAR Subpart 6.3 is not required.

225.7703–2 Determination requirements.

Before use of a procedure specified in 225.7703–1(a), a written determination must be prepared and executed as follows:

(a) For products or services to be used only by the military forces, police, or other security personnel of Iraq or Afghanistan, the contracting officer shall—

(1) Determine in writing that the product or service is to be used only by the military forces, police, or other security personnel of Iraq or Afghanistan; and

(2) Include the written determination in the contract file.

(b) For products or services not limited to use by the military forces, police, or other security personnel of Iraq or Afghanistan, the following requirements apply:

(1) The appropriate official specified in paragraph (b)(2) of this subsection must determine in writing that it is in the national security interest of the United States to use a procedure specified in 225.7703–1(a), because—

(i) The procedure is necessary to provide a stable source of jobs in Iraq or Afghanistan; and

(ii) Use of the procedure will not adversely affect—

(A) Operations in Iraq or Afghanistan (including security, transition, reconstruction, and humanitarian relief activities); or

(B) The U.S. industrial base. The authorizing official generally may presume that there will not be an adverse effect on the U.S. industrial base. However, when in doubt, the authorizing official should coordinate with the applicable subject matter expert specified in PGI 225.7703–2(b).

(2) Determinations may be made for an individual acquisition or a class of acquisitions meeting the criteria in paragraph (b)(1) of this subsection as follows:

(i) The head of the contacting activity is authorized to make a determination that applies to an individual acquisition with a value of less than $78.5 million.

(ii) The Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing, and the following officials, without power of redelegation, are authorized to make a determination that applies to an individual acquisition with a value of $78.5 million or more or to a class of acquisitions:

(A) Defense Logistics Agency Component Acquisition Executive.

(B) Army Acquisition Executive.

(C) Navy Acquisition Executive.

(D) Air Force Acquisition Executive.

(3) The contracting officer—

(i) Shall include the applicable written determination in the contract file; and

(ii) Shall ensure that each contract action taken pursuant to the authority of a class determination is within the scope of the class determination, and shall document the contract file for each action accordingly.

(c) See PGI 225.7703–2(c) for formats for use in preparation of the determinations required by this subsection.

225.7703–3 Evaluating offers.

(a) Evaluate offers submitted in response to solicitations that include the provision at 252.225–7023, Preference for Products or Services from Iraq or Afghanistan, as follows:

(1) If the low offer is an offer of a product or service from Iraq or Afghanistan, award on that offer.

(2) If there are no offers of a product or service from Iraq or Afghanistan, award on the low offer.

(3) Otherwise, apply the evaluation factor specified in the solicitation to the low offer.

(i) If the price of the low offer of a product or service from Iraq or Afghanistan is less than the evaluated price of the low offer, award on the low offer of a product or service from Iraq or Afghanistan.

(ii) If the evaluated price of the low offer remains less than the low offer of a product or service from Iraq or Afghanistan, award on the low offer.

(b) If the provision at 252.225–7023 is modified to provide a preference exclusively for products or services from Iraq or Afghanistan, also modify the evaluation procedures in paragraph (a) of this subsection to remove ''or Afghanistan'' or ''Iraq or'', respectively, wherever the phrase appears.

225.7703–4 Reporting requirement.

The following organizations shall submit periodic reports to the Deputy Director, Program Acquisition and Contingency Contracting, Defense Procurement, Acquisition Policy, and Strategic Sourcing, in accordance with PGI 225.7703–4, to address the organization's use of the procedures authorized by this section:

(a) The Joint Contracting Command (Iraq/Afghanistan).

(b) The Department of the Army, except for contract actions reported by the Joint Contracting Command.

(c) The Department of the Navy.

(d) The Department of the Air Force.

(e) The Defense Logistics Agency.

(f) The other defense agencies and other DoD components that execute reportable contract actions.

225.7703–5 Solicitation provisions and contract clauses.

(a) Use the provision at 252.225–7023, Preference for Products or Services from Iraq or Afghanistan, in solicitations that provide a preference for products or services from Iraq or Afghanistan in accordance with 225.7703–1(a)(1). The contracting officer—

(1) May modify the provision to provide a preference exclusively for products or services from Iraq or exclusively for products or services from Afghanistan by removing ''or Afghanistan'' or ''Iraq or'', respectively, wherever the phrase appears in the provision. If this provision is so modified, the clause at 252.225–7024 shall be modified accordingly; and

(2) May modify the 50 percent evaluation factor in accordance with contracting office procedures.

(b) Use the clause at 252.225–7024, Requirement for Products or Services from Iraq or Afghanistan, in solicitations that include the provision at 252.225–7023, Preference for Products or Services from Iraq or Afghanistan, and in the resulting contract. If the provision at 252.225–7023 has been modified to provide a preference exclusively for Iraq or exclusively for Afghanistan, in accordance with paragraph (a)(1) of this subsection, the clause at 252.225–7024 shall be modified accordingly.

(c)(1) Use the clause at 252.225–7026, Acquisition Restricted to Products or Services from Iraq or Afghanistan, in solicitations and contracts that—

(i) Are restricted to the acquisition of products or services from Iraq or Afghanistan in accordance with 225.7703–1(a)(2); or

(ii) Will be directed to a particular source or sources from Iraq or Afghanistan in accordance with 225.7703–1(a)(3).

(2) The contracting officer may modify the clause to restrict the acquisition to products or services from Iraq, or to restrict the acquisition to products or services from Afghanistan, by removing ''or Afghanistan'' or ''Iraq or'', respectively, wherever the phrase appears in the clause.

(d) When the Trade Agreements Act applies to the acquisition, use the appropriate clause and provision as prescribed at 225.1101(6) and (7).

(e) Do not use any of the following provisions or clauses in solicitations or contracts that include the provision at

252.225–7023, the clause at 252.225–7024, or the clause at 252.225–7026:

(1) 252.225–7000, Buy American Act—Balance of Payments Program Certificate.

(2) 252.225–7001, Buy American Act and Balance of Payments Program.

(3) 252.225–7002, Qualifying Country Sources as Subcontractors.

(4) 252.225–7020, Trade Agreements Certificate.

(5) 252.225–7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.

(6) 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program.

(7) 252.225–7044, Balance of Payments Program—Construction Material.

(8) 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Section 252.225–7021 is amended by adding Alternate I to read as follows:

252.225–7021 Trade Agreements.

* * * * *

Alternate I (SEP 2008)

As prescribed in 225.1101(6)(ii), add the following paragraph (a)(14) to the basic clause and substitute the following paragraph (c) for paragraph (c) of the basic clause:

(a)(14) *Iraqi end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Iraq; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Iraq into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only U.S.-made, qualifying country, Iraqi, or designated country end products unless—

(1) In its offer, the Contractor specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation; and

(2)(i) Offers of U.S.-made, qualifying country, Iraqi, or designated country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest waiver has been granted.

■ 9. Sections 252.225–7022 through 252.225–7024 are added to read as follows:

252.225–7022 Trade Agreements Certificate—Inclusion of Iraqi End Products.

As prescribed in 225.1101(7), use the following provision:

TRADE AGREEMENTS CERTIFICATE—INCLUSION OF IRAQI END PRODUCTS (SEP 2008)

(a) *Definitions. Designated country end product, Iraqi end product, nondesignated country end product, qualifying country end product,* and *U.S.-made end product* have the meanings given in the Trade Agreements clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) Will consider only offers of end products that are U.S.-made, qualifying country, Iraqi, or designated country end products unless—

(i) There are no offers of such end products;

(ii) The offers of such end products are insufficient to fulfill the Government's requirements; or

(iii) A national interest waiver has been granted.

(c) *Certification and identification of country of origin.*

(1) For all line items subject to the Trade Agreements clause of this solicitation, the offeror certifies that each end product to be delivered under a contract resulting from this solicitation, except those listed in paragraph (c)(2) of this provision, is a U.S.-made, qualifying country, Iraqi, or designated country end product.

(2) The following supplies are other nondesignated country end products:

(*Country of Origin*)

(*Line Item Number*)

(End of provision)

252.225–7023 Preference for Products or Services from Iraq or Afghanistan.

As prescribed in 225.7703–5(a), use the following provision:

PREFERENCE FOR PRODUCTS OR SERVICES FROM IRAQ OR AFGHANISTAN (SEP 2008)

(a) *Definitions. Product from Iraq or Afghanistan* and service *from Iraq or Afghanistan,* as used in this provision, are defined in the clause of this solicitation entitled ''Requirement for Products or Services from Iraq or Afghanistan'' (DFARS 252.225–7024).

(b) *Representation.* The offeror represents that all products or services to be delivered under a contract resulting from this solicitation are products from Iraq or Afghanistan or services from Iraq or Afghanistan, except those listed in—

(1) Paragraph (c) of this provision; or

(2) Paragraph (c)(2) of the provision entitled ''Trade Agreements Certificate—Inclusion of Iraqi End Products,'' if included in this solicitation.

(c) *Other products or services.* The following offered products or services are not products from Iraq or Afghanistan or services from Iraq or Afghanistan:

(*Country of Origin*)

(*Line Item Number*)

(d) *Evaluation.* For the purpose of evaluating competitive offers, the Contracting Officer will increase by 50 percent the prices of offers of products or services that are not products or services from Iraq or Afghanistan.

(End of provision)

252.225–7024 Requirement for Products or Services from Iraq or Afghanistan.

As prescribed in 225.7703–5(b), use the following clause:

REQUIREMENT FOR PRODUCTS OR SERVICES FROM IRAQ OR AFGHANISTAN (SEP 2008)

(a) *Definitions.* As used in this clause—

(1) *Product from Iraq or Afghanistan* means a product that is mined, produced, or manufactured in Iraq or Afghanistan.

(2) *Service from Iraq or Afghanistan* means a service that is performed in Iraq or Afghanistan predominantly by citizens or permanent resident aliens of Iraq or Afghanistan.

(b) The Contractor shall provide only products from Iraq or Afghanistan or services from Iraq or Afghanistan under this contract, unless, in its offer, it specified that it would provide products or services other than products from Iraq or Afghanistan or services from Iraq or Afghanistan.

(End of clause)

■ 10. Section 252.225–7026 is added to read as follows:

252.225–7026 Acquisition Restricted to Products or Services from Iraq or Afghanistan.

As prescribed in 225.7703–5(c), use the following clause:

ACQUISITION RESTRICTED TO PRODUCTS OR SERVICES FROM IRAQ OR AFGHANISTAN (SEP 2008)

(a) *Definitions.* As used in this clause—

(1) *Product from Iraq or Afghanistan* means a product that is mined, produced, or manufactured in Iraq or Afghanistan.

(2) *Service from Iraq or Afghanistan* means a service that is performed in Iraq or Afghanistan predominantly by citizens or permanent resident aliens of Iraq or Afghanistan.

(b) The Contractor shall provide only products from Iraq or Afghanistan or services from Iraq or Afghanistan under this contract.

(End of clause)

252.225–7032 [Amended]

■ 11. Section 252.225–7032 is amended in the introductory text by removing ''225.1101(7)'' and adding in its place ''225.1101(8)''.

252.225–7033 [Amended]

■ 12. Section 252.225–7033 is amended in the introductory text by removing ''225.1101(8)'' and adding in its place ''225.1101(9)''.

252.225–7035 [Amended]

■ 13. Section 252.225–7035 is amended in the introductory text and in Alternate I by removing ''225.1101(9)'' and adding in its place ''225.1101(10)''.

252.225–7036 [Amended]

■ 14. Section 252.225–7036 is amended in the introductory text and in Alternate I by removing ''225.1101(10)'' and adding in its place ''225.1101(11)''.

[FR Doc. E8–21376 Filed 9–12–08; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 237

RIN 0750–AG04

Defense Federal Acquisition Regulation Supplement; Limitation on Service Contracts for Military Flight Simulators (DFARS Case 2008–D013)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 883(b) of the National Defense Authorization Act for Fiscal Year 2008. Section 883(b) changed the conditions under which DoD may waive the prohibition on entering into a service contract to acquire a military flight simulator.

DATES: *Effective Date:* September 15, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0302; facsimile 703–602–7887. Please cite DFARS Case 2008–D013.

SUPPLEMENTARY INFORMATION:

A. Background

Section 832 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364) established a prohibition on the award of a DoD service contract for the acquisition of a military flight simulator, unless the Secretary of Defense determines that a waiver is necessary for national security purposes and provides an economic analysis to the congressional defense committees. This prohibition and the waiver authority are implemented at DFARS 237.102–71.

Section 883(b) of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181) amended the conditions for waiver in Section 832 of Public Law 109–364 by replacing ''necessary for national security purposes'' with ''in the national interest''. This final rule amends DFARS 237.102–71 to reflect the change made by Section 883(b) of Public Law 110–181.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2008–D013.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 237

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 237 is amended as follows:

PART 237—SERVICE CONTRACTING

■ 1. The authority citation for 48 CFR part 237 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 237.102–71 is amended by revising paragraph (b) introductory text and paragraph (b)(1) to read as follows:

237.102–71 Limitation on service contracts for military flight simulators.

* * * * *

(b) Under Section 832 of Public Law 109–364, as amended by Section 883(b) of Public Law 110–181, DoD is prohibited from entering into a service contract to acquire a military flight simulator. However, the Secretary of Defense may waive this prohibition with respect to a contract, if the Secretary—

(1) Determines that a waiver is in the national interest; and

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 237

RIN 0750–AF64

Defense Federal Acquisition Regulation Supplement; Security-Guard Functions (DFARS Case 2006–D050)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 343 of the National Defense Authorization Act for Fiscal Year 2008. Section 343 extends, through September 30, 2012, the period during which contractor performance of security-guard functions at military installations or facilities is authorized to fulfill additional requirements resulting from the terrorist attacks on the United States on September 11, 2001.

DATES: *Effective date:* September 15, 2008.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before November 14, 2008, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D050, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2006–D050 in the subject line of the message.
- *Fax:* 703–602–7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Michael Benavides, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.